

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)**

DAVID J. BOSHEA

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Plaintiff/Counter-Defendant,

*

v.

Case No. 1:21-CV-00309-ELH

*

COMPASS MARKETING, INC.

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Defendant/Counter-Plaintiff

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AND

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COMPASS MARKETING, INC.

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Third-Party Plaintiff,

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JOHN DOE(S)

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Third-Party Defendant(s).

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**PLAINTIFF'S CONTESTED MOTION FOR LEAVE
TO FILE HIS SECOND AMENDED COMPLAINT**

David J. Boshea (“Boshea”) respectfully moves this Court for an order granting him leave to file his Second Amended Complaint. In support of this motion, Boshea states as follows:

1. On February 5, 2021, Boshea filed his two-count complaint against Compass Marketing, Inc. (“Compass”) for breach of contract in Count I and violation of the Maryland Wage Payment and Collection Act in Count II (the “Complaint”).
2. On August 5, 2021, Boshea filed his Amended Complaint to clarify the severance payments Compass owes.

3. On August 25, 2021, Compass's counsel informed Boshea that Compass alleges that because Boshea lived in Illinois while working for Compass, Illinois law governs the parties' dispute. Compass takes its position despite a choice of law provision in the Compass Marketing, Inc. Agreement Relating to Employment and Post-Employment Compensation identifying Maryland law as governing that contract.
4. Boshea believes Maryland law applies; however, should the Court determine Illinois law governs the parties' dispute, Boshea may lack a remedy. If the Court determines as a matter of law that Illinois law applies, Boshea would be foreclosed from recovering under the Maryland Wage Payment and Collection Law. Similarly, without including the proposed Count III, which raises a claim under the Illinois Wage Payment and Collection Act, unless he amends his Complaint, Boshea might have suffered harm but lack a remedy.
5. In the abundance of caution, Boshea proposes to file his Second Amended Complaint, which he has attached as Exhibit 1 (the "Second Amended Complaint"), which includes Count III, as an alternative claim under the Illinois Wage Payment and Collection Act.
6. Boshea has attached a redline version of the proposed Amended Complaint, attached as Exhibit 2.
7. Rule 15 of the Federal Rules of Civil Procedure allows a party to amend its pleading only with the opposing party's written consent or with leave of this Court. The Court should freely grant leave when justice so requires. See FED. R. CIV. P. 15. The Local Rules of the United States District Court for the District of Maryland also require counsel to attempt to obtain the consent of other counsel before filing a motion requesting leave to file an amended pleading. D. MD. LOC. R. 6(d).

8. Boshea emailed the proposed Second Amended Complaint to Compass' counsel on August 31, 2021, and called counsel on September 1, 2021 to determine whether counsel had an objection. Compass' counsel did not respond to the email or return the voicemail left at Compass counsel's office. Therefore, due to potential issues concerning the statute of limitation, Boshea will presume Compass objects to the relief sought in this motion. Notwithstanding this presumption, Boshea made a good faith effort to contact both Stephen Stern and Heather Yeung, who appeared on Compass' behalf.

WHEREFORE, David John Boshea respectfully requests that the Court consider the attached Second Amended Complaint, grant David John Boshea leave to file the Second Amended Complaint, and grant such other proper relief.

Dated: August 31, 2021

DAVID J. BOSHEA

/s/ Gregory J. Jordan

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COUNSEL FOR DAVID J. BOSHEA

CERTIFICATE OF SERVICE

Gregory Jordan certifies that he served Plaintiff's Contested Motion for Leave to File His Second Amended Complaint on counsel for Compass Marketing, Inc., by service through the Court's CM/ECF system and by email to stern@kaganstern.com, rudiger@kaganstern.com, and yeung@kaganstern.com on September 1, 2021.

/s/ Gregory J. Jordan
Gregory J. Jordan